

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROBERTO DURAND,

Plaintiff,

v.

MUARO, *et al.*,

Defendants.

Case No. 3:22-cv-00328-MMD-CLB

ORDER

Pro se Plaintiff Roberto Durand brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1.) On October 6, 2022, this Court ordered Durand to file a fully complete application to proceed *in forma pauperis* (“IFP”) or pay the full \$402 filing fee on or before December 5, 2022. (ECF No. 10.) The Court warned Durand that this action could be dismissed without prejudice if he failed to either file a new, fully complete IFP application with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2.) That deadline expired and Durand did not file a fully complete IFP application or pay the full \$402 filing fee. Rather, Durand filed two IFP applications that are incomplete because Durand did not submit an inmate account statement for the previous six-month period. (ECF Nos. 11, 12.) This is the same deficiency that the Court identified in Durand’s earlier IFP applications. (ECF No. 10 at 1.)

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court

1 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir.
2 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
3 keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
4 1987) (dismissal for failure to comply with court order). In determining whether to dismiss
5 an action on one of these grounds, the Court must consider: (1) the public’s interest in
6 expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk
7 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
8 merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine*
9 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

10 The first two factors, the public’s interest in expeditiously resolving this litigation
11 and the Court’s interest in managing its docket, weigh in favor of dismissal of Durand’s
12 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
13 because a presumption of injury arises from the occurrence of unreasonable delay in filing
14 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
15 F.2d 522, 524 (9th Cir. 1976). The fourth factor, the public policy favoring disposition of
16 cases on their merits, is greatly outweighed by the factors favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic alternatives can
18 be used to correct the party’s failure that brought about the Court’s need to consider
19 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
20 that considering less drastic alternatives *before* the party has disobeyed a court order
21 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
22 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
23 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s
24 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
25 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
26 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
27 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
28 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and

1 unless Durand either files a fully complete IFP application or pays the \$402 filing fee for
2 a civil action, the only alternative is to enter a second order setting another deadline. But
3 the reality of repeating an ignored order is that it often only delays the inevitable and
4 squanders the Court's finite resources.

5 The circumstances here do not indicate that this case will be an exception: Durand
6 has repeatedly failed to correct the singular deficiency that the Court clearly identified with
7 his IFP applications. Setting another deadline is not a meaningful alternative given these
8 circumstances. So the fifth factor favors dismissal. Having thoroughly considered these
9 dismissal factors, the Court finds that they weigh in favor of dismissal.

10 **II. CONCLUSION**

11 It is therefore ordered that this action is dismissed without prejudice based on
12 plaintiff Roberto Durand's failure to either file a fully complete application to proceed *in*
13 *forma pauperis* or pay the full \$402 filing fee in compliance with this Court's October 6,
14 2022 order. The Clerk of Court is directed to enter judgment accordingly and close this
15 case. No other documents may be filed in this now-closed case. If Durand wishes to
16 pursue his claims, he must file a complaint in a new case.

17 DATED THIS 13th Day of December 2022.



18
19
20 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE